IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 590 of 1997
WITH
CRIMINAL MISC.APPLICATION No. 201 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANHARLAL CHUNILAL SHAH & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SV RAJU for Applicant(s) : 1 - 3.
MR RC KODEKAR ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,
MS MEGHA JANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/07/2007

ORAL JUDGMENT

1. As both these applications are arising out of one criminal complaint, they are being disposed of by this common judgement and order.

2. Criminal Misc.Application No.590 of 1997 is filed by the applicants – original accused Nos.3, 4 and 6 of Criminal Complaint No.173 of 1996, pending in the court of learned Additional Chief Metropolitan Magistrate at Ahmedabad under sec.482 of the Code of Criminal Procedure to quash and set aside the complaint as well as the summons/process issued by the said court.

3. Criminal Misc.Application No.201 of 1997 is filed by the applicants – original accused No.7 of Criminal Complaint No.173 of 1996 pending in the court of learned Additional Chief Metropolitan Magistrate at Ahmedabad under sec.482 of the Code of Criminal Procedure to quash and set aside the complaint as well as the summons/process issued by the said court.

4. A complaint being Criminal Case No.173 of 1996 came to be filed by the respondent No.2 herein in each of the applications – original complainant namely Niranjanaben M. Thakkar in the court of learned Additional Chief Metropolitan Magistrate at Ahmedabad against the respective applicants and others being Directors of the original accused No.1 – Santram Spinners Limited for the offences under sections 63, 68, 628 of the Companies Act, 1956 and under sections 467, 471, 477A, 420, 34

and 120B of the Indian Penal Code inter-alia alleging that the original accused No.1 is a Company registered under the provisions of Companies Act, 1956, original accused Nos.2 to 6 are Directors of the said respondent No.1 - Company and all concerned in the said Company are responsible for the administration and transactions of the said Company. It is further alleged in the complaint that they have signed in the prospectus dtd.20/9/1995 for the public issue to be opened on 16/10/1995 and for all the statements and averments they are personally and jointly liable. That accused No.7 (applicant of Criminal Misc.Application No.201 of 1997) is the brother of the accused No.2 and he was Director in the accused No.1 Company till 1/11/1994 and was looking after the affairs of the Company.

5. It was further alleged in the complaint that the accused Nos.2 and 7 are also jointly functioning as Directors in the other Companies. It is further alleged in the complaint that an advertisement was issued by the accused No.1 Company for issue of Rs.35 equity share of Rs.10 each at a premium of Rs.10 each from the public for collection of Rs.7 Crores through the media of news papers and for this purpose a prospectus was published by the Company

in which it was published that the issue for the same will open on 16/10/1995 and its directors were legally bound to give completely correct information in the said prospectus so that the general public can study the details mentioned therein, and if found necessary, can apply for such public issue and can purchase the shares. It is further alleged that necessary sufficient information regarding the financial capacity and its share capital is required to be given in the said prospectus. Accordingly, one prospectus was issued on 20/9/1995 by the accused No.1 Company and the accused Nos.2 to 6 have signed necessary declarations. It is further alleged in the complaint that on page No.4 of the prospectus, under the caption “capital structure” it has been mentioned that the accused No.1 Company, out of the alleged revaluation reserve of Rs.96,40,000 on 1/4/1993, the Company has allotted 9,64,000 equity bonus shares. Moreover, at page No.22 of the prospectus, under the caption “assets and liabilities”, in the audited report audited by the Company's auditor and Chartered Accountant, Dhirajlal Shah & Co. it has been mentioned in para 5(c) of the audit report that share capital include 9,64,000 equity shares of rupees 10 each allotted as fully paid up shares

by the allotted capitalisation of revaluation reserve on 1/4/1993 by the accused No.1 Company. Moreover, at page No.5 of the same, it is also mentioned that accused No.1 company as on 8/4/1995 allotted 4,00,000 shares of Rs.40,00,000 as bonus shares. Thus, out of 4,00,000 shares total 3,33,000 shares have been allotted to the aforesaid shareholders. Thus, 12,97,000 shares of Rs.1,29,000 have been allotted to the relatives and directors of the accused No.1 Company. Thus, 12,97,000 shares of Rs.1,29,73,000 have been allotted to the relatives and the directors of the accused No.1 Company. It is further averred in the complaint that the aforesaid statements of the complainant is supported from the annual return as on 30/9/1993 filed by the accused before the Registrar of Companies and at page Nos.2 and 3 it is mentioned that the total number of equity shares of the Company is 1,92,800, meaning thereby that on 30/9/1993 the figure of company's equity share was 1,92,800. Now, if as mentioned in the prospectus, as per the statement of the accused, on /4/1994, if 9,64,000 bonus shares have been issued, the total figure of equity shares of the company as on 30/9/1993 would have been shown 11,56,800. Thus, it becomes clear that the information

given in the prospectus by the accused that on 4/4/1993, 9,64,000 bonus shares were issued, is incorrect. It is further averred that it has been very specifically mentioned on page No.22 of the prospectus issued by the Company that on 1/4/1994, 9,64,000 bonus shares were issued based on the revaluation of the reserves. It is further alleged that in the Form No.23 filed before the Registrar of Companies by the accused company on 27/4/1994 it has been clearly mentioned that on the basis of special resolution passed by the Company on 31/3/1994, Rs.96,40,000 which were in the company's balance-sheet in the Profit & Loss Account and the General Reserve Account, were decided to be capitalised and to issue five new equity shares against one equity share. Thus, the said bonus shares which have been issued have been issued by capitalising Rs.96,40,000 from the Profit & Loss Account and General Reserve Account of the company and not on the basis of revaluation reserved which has been stated by the accused in the prospectus. It is further averred that in the company's Profit & Loss Account and the General Reserve Account as on 31/3/1994, there was the credit of only Rs.53,37,000 and it was not possible to allot the bonus

shares of Rs.96,40,000. Thus, it is alleged that the bonus share of accused No.1 Company were issued on 1/4/1994 and inspite of the necessary required forms having been filed by the accused before the Registrar of Companies and though the record of the Company is supporting these facts, false evidences have been created and the accused in collusion with each other, on 1/4/1993 the bonus shares of the company have been issued and they were fully aware that the facts regarding the bonus shares presented by them is false, it has been shown as true. It is further alleged that the resolution regarding bonus share though not having been made on 1/4/1993 or prior to that, such resolution have been passed and thus the accused have manipulated with the record of the company and though they were aware that the facts are false, they have presented the facts as true facts and thus, have presented wrong information on government records. It is further alleged that by showing false information in the prospectus public at large has been misguided. It is further averred that the accused have attempted to create false documentary evidence in order to succeed in creation of false documents for issuance of bonus shares on 1/4/1994 by the accused. Necessary

particulars with regard regard to false documentary evidences and the information is mentioned in para 9 of the complaint. Necessary allegations against the accused Nos.3, 4, 5 and 7 (applicants herein) are mentioned in para 10 of the complaint. Thus, it is alleged that the accused have committed offences under sec.63 of the Companies Act by making intentionally false statements in the prospectus issued by them on 20/9/1995. It is further alleged that the accused have intentionally concealed true facts and by making false statements by misrepresenting public to invest in the public issue of accused No.1, committed an offence under sec.68 of the Companies Act so also the accused knowing fully well that the important facts in the company's balance-sheet and the prospectus and other documents are incorrect, the said facts have been shown as true, have committed offence under sec.628 of the Companies Act. It is further alleged in the complaint that the accused in collusion with each other by tampering with the records and accounts, by presenting false evidence and inspite of knowing that they are false evidences, have been used as true one and by preparing and getting prepared false accounts, and using and getting used them as correct

accounts, public has paid a huge amount of Rs.12.97 Crores at Rs.20 per share and have profited to the extent of Rs.2.60 Crores and have committed the offences under sections 467, 468, 471, 477A, 420, 34 and 120B of the Indian Penal Code.

6. That the learned trial court issued summons / process against the respective applicants – original accused on 7/12/1996. Being aggrieved by and dissatisfied with the same, the applicants have preferred both the applications for the aforesaid reliefs.

7. Mr.S.V. Raju, learned advocate appearing on behalf of the respective applicants has vehemently submitted that the applicants have not committed any of the offences under sections 63, 68, 628 of the Companies Act, 1956. It is further submitted by him that there are no specific allegations against the respective applicants making out a case against them for the offences punishable under sections 63, 68, 628 of the Companies Act, 1956 as well as under sections 467, 471, 477A, 420, 34 and 120B of the Indian Penal Code.

8. It is further submitted by Shri Raju that the dispute is of a civil nature and the complainant herself has resorted to civil remedy by filing a civil suit which is pending and

therefore, the complaint filed by the respondent No.2 – original complainant is nothing but abuse of process of law and is the result of malafide intention of the complainant, which is filed for the purpose of harassing the applicants.

9. It is further submitted by Shri Raju that the complaint does not disclose any offence nor does it alleges any specific allegation against the present applicants, save and except the vague allegations against all the accused and therefore, the complaint is required to be quashed and set aside and the impugned order of the learned Additional Metropolitan Magistrate, Ahmedabad issuing process / summons to the applicants vide order dtd.7/12/1996 is required to be quashed and set aside.

10. It is submitted by Mr.Raju, learned advocate for the applicants that as held by the Hon'ble Supreme Court in catena of judgements that if the complaint is of civil nature, High Court shall exercise inherent powers by quashing the complaint.

11. Mr.Raju, learned advocate has also relied upon the decision of this Court in the case of State of Gujarat Vs. Motibhai Jethabhai Makwana, reported in 1992 (2) GLH 306 submitting that the complaint against the applicants

for the offences punishable under sections 467, 468, 471, 477A requires to be quashed and set aside.

12. Mr.Raju, learned advocate for the applicants has relied upon the unreported decision of the learned Single Judge of this Court in the case of Sudhir Indravadan Nanavati Vs. State of Gujarat, rendered in the Criminal Misc.Application No.139 of 1997, whereby the learned Single Judge has quashed the impugned complaint qua original accused No.5 of the present complaint.

13. Both these applications are opposed by Mr.R.C.Kodekar, learned Additional Public Prosecutor for the State and Ms.Megha Jani, learned advocate for the respondent No.2 – original complainant. While opposing both the applications, it is submitted by the learned advocates for the respondents that specific allegations against each of the applicants are made in the complaint and prima facie case is made out against the accused persons for the offences alleged against them. It is further submitted by them that merely because the complainant has resorted to civil remedy, it cannot be said that the applicants / accused persons have not committed the offence under the Companies Act and/or Indian Penal Code. It is further submitted that even in the order passed below the notice

of motion, in the suit filed by the respondent No.2, the civil court has specifically observed that there is a misstatement in the prospectus by the accused persons. The learned advocates appearing on behalf of the respondents have heavily relied upon the decisions of the Hon'ble Supreme Court in the case of A.V. Mohan Rao and another Vs. M.Kishan Rao and another, reported in (2002) 6 SCC 174 and relying upon the said decision, it is requested to dismiss both the applications.

14. Heard the learned advocates for the respective parties.

15. This Court has considered the impugned complaint in detail and has gone through the averments and allegations made in the complaint. This Court has also considered relevant provisions of the Companies At more particularly sections 63, 68 and 628 of the Companies Act. It is not in dispute that all the applicants – original accused are signatories to the prospectus. There are specific allegations and averments against the respective applicants in the complaint, more particularly in para 10 of the complaint. Now, in the backdrop of the above, all the submissions made on behalf of the respective applicants are defences which are required to be considered and dealt with by the trial court on leading

proper evidence at the time of trial. What is required to be considered at this stage is whether there is prima facie case against the applicants which requires further trial or not and whether there are specific averments / allegations against the respective accused or not. At this stage, while considering the applications under sec.482 of the Code of Criminal Procedure, this Court is not required to consider in detail whether the accused persons are likely to be convicted or not. As held by the Hon'ble Supreme Court in the case of A.V. Mohan Rao (supra) power of quashing a criminal complaint and the proceedings initiated on its basis under sec.482 of the Code of Criminal Procedure is to be exercised very sparingly with circumspection that too in the rarest of rare cases. In the case before the Hon'ble Supreme Court the allegations against the accused persons were with regard to the commission of the offences under sections 60, 63, 68, 68A read with sec.621 of the Companies Act. Considering the decision of the Hon'ble Supreme Court in the case of A.V. Mohan Rao (supra) and averments and allegations in the complaint, the prayer of the applicants to quash the complaint cannot be accepted and the impugned complaint is not required to be quashed and

set aside in exercise of the powers under sec.482 of the Code of Criminal Procedure.

16. The main contention on behalf of the applicants is that the dispute is of civil nature and as the complainant herself has filed Civil Suit, the criminal proceedings should be quashed and set aside. As held by the Hon'ble Supreme Court in the case of Trisuns Chemical Industry Vs. Rajesh Agrwal and another, reported in (1999) 8 SCC 686, criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable. Under the circumstances, merely because the original complainant has resorted to civil remedy by filing a civil suit, the impugned complaint for the offences under the Companies Act and Indian Penal Code is not required to be quashed and set aside.

17. Now, so far as the reliance placed by the learned advocate for the applicants upon the unreported decision of the learned Single Judge by which the learned Single Judge has quashed the impugned complaint qua original accused No.5 is concerned, on going through the said judgement it is clear that in the said judgement, the learned Single Judge has specifically observed that the

said decision is without entering into further details i.e. whether there is a civil dispute or not because other Criminal Misc. Applications (present applications) are pending in the court and if the court observes anything in the matter, it will affect the rights of the parties. Thus, the said decision will not be of any assistance to the applicants.

18. Even otherwise, as stated above, there are specific allegations and averments against each of the applicants and whatever has been submitted on behalf of the applicants in support of their prayer to quash the complaint, all are defences which are required to be considered at the time of trial on leading proper evidence.

19. For the reasons stated above, no case is made out to quash the impugned complaint in exercise of the powers under sec.482 of the Code of Criminal Procedure and/or to quash and set aside the summons / process issued by the learned Additional Metropolitan Magistrate, Ahmedabad against the applicants and hence both the applications required dismissal and are accordingly

dismissed. Rule is discharged and interim relief granted earlier, if any stands vacated forthwith, in both the applications.

(M.R. SHAH, J.)

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